

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
TENNESSEE NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**RESPONSE TO STATE DEFENDANTS'
NOTICE OF ADDITIONAL AUTHORITY**

Plaintiff L.E., by his next friends and parents, Shelley Esquivel and Mario Esquivel, respectfully submits this Response to State Defendants' Notice of Additional Authority, Dkt. No. 86. State Defendants' filing went beyond informing the Court of new authority; it also included multiple paragraphs of argument. Because this Court has not granted leave for the parties to file either sur-reply or supplemental briefing on the pending summary judgment motions, Dkt. Nos. 46 (County Defendants), 50 (L.E.), and 54 (State Defendants), State Defendants' advocacy should be disregarded. To the extent the Court considers State Defendants' commentary, L.E. offers the following responses.

The first case State Defendants cite, *Haaland v. Brackeen*, 143 S.Ct. 1609 (2023), did little more than reiterate the same rule of redressability the parties already briefed. L.E. has already explained why the TSSAA need not be named a defendant in order to satisfy Article III's

requirements. Dkt. No. 66 at 7-9. State Defendants have not identified anything new in *Haaland* that changes the analysis.

Meanwhile, State Defendants confine the most important fact about *L.W. ex rel. Williams v. Skrmetti*, -- F.4th --, 2023 WL 4410576 (6th Cir. July 8, 2023)—that it involved an emergency motion for a stay, and not a merits decision—to a parenthetical. The Sixth Circuit has expressly recognized that its “interlocutory orders are ... subject to revision.” *Kraus v. Taylor*, 715 F.3d 589, 594 (6th Cir. 2013). And the *L.W.* majority recognized the tentative nature of its decision. For example, it characterized its “initial views” as “just that: initial,” and acknowledged that those views “may be wrong,” in part because “the one week [the panel] had to resolve this motion d[id] not suffice to see [its] own mistakes.” *L.W.*, 2023 WL 4410576, at *8.

Even beyond its preliminary nature, *L.W.* is distinguishable from this case on several grounds. L.E. can go into more depth if the Court wants further briefing, but there are three particularly salient differences between the two cases worth flagging at the outset. *First*, unlike this case, *L.W.* did not involve a Title IX claim. *Second*, while the Tennessee Legislature made a series of findings regarding the medical care at issue in *L.W.*, there is nothing in the legislative record here about the consequences of transgender boys participating in boys’ interscholastic sports. And *third*, and relatedly, this complete lack of any connection between transgender boys participating on boys’ sports teams and the State’s asserted interests for SB 228—which deal exclusively with girls’ interscholastic sports—means that even if rational-basis review applies to SB 228 (and it should not), the statute fails to satisfy that level of scrutiny. Dkt. No. 66 at 25-27.

Dated: July 18, 2023

Leslie Cooper (*pro hac vice*)
L. Nowlin-Sohl (*pro hac vice*)
Taylor Brown (*pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad St.
New York, NY 10004
Tel: (212) 549-2584
lcooper@aclu.org
lnowlin-sohl@aclu.org
tbrown@aclu.org

Thomas F. Costello-Vega (*pro hac vice*)
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Avenue, Suite 2400
Los Angeles, CA 90071
Tel: (213) 443-5300
thomas.costello-vega@wilmerhale.com

Tara L. Borelli (*pro hac vice*)
Carl S. Charles (*pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND INC.
1 West Court Square, Suite 105
Decatur, GA 30030-2556
Tel: (404) 897-1880
Fax: (404) 506-9320
tborelli@lambdalegal.org
ccharles@lambdalegal.org

Sasha Buchert (*pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND INC.
1776 K Street NW, 8th Floor
Washington, DC 20006-5500
Tel: (202) 804-6245
sbuchert@lambdalegal.org

Respectfully submitted,

/s/ Alan Schoenfeld
Alan Schoenfeld (*pro hac vice*)
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street, 45th Floor
New York, NY 10007
Tel: (212) 937-7294
alan.schoenfeld@wilmerhale.com

Stella Yarbrough (No. 33637)
Lucas Cameron-Vaughn (*pro hac vice*
pending)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF TENNESSEE
P.O. Box 120160
Nashville, TN 37212
Tel: (615) 320-7142
syarbrough@aclu-tn.org
lucas@aclu-tn.org

Jennifer Milici (*pro hac vice*)
Emily L. Stark (*pro hac vice*)
Samuel M. Strongin (*pro hac vice*)
John W. O'Toole (*pro hac vice*)
Britany Riley-Swanbeck (*pro hac vice*)
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037
Tel: (202) 663-6000
jennifer.milici@wilmerhale.com
emily.stark@wilmerhale.com
samuel.strongin@wilmerhale.com
john.o'toole@wilmerhale.com
britany.riley-swanbeck@wilmerhale.com

***Attorneys for Plaintiff L.E., by his next
friends and parents, Shelley Esquivel and
Mario Esquivel***

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2023, a true and correct copy of the foregoing was served on the below counsel for Defendants, via the Court's ECF/CM system.

Stephanie A. Bergmeyer
Senior Assistant Attorney General
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
Stephanie.Bergmeyer@ag.tn.gov
(615) 741-6828

David M. Sanders
Senior Deputy Law Director, Knox County
Suite 612, City-County Building
400 Main Street
Knoxville, TN 37902
David.Sanders@knoxcounty.org
(865) 215-2327

Clark L. Hildabrand
Assistant Solicitor General
Office of Tennessee Attorney General and
Reporter
P.O. Box 20207
Nashville, Tennessee 37202
Clark.Hildabrand@ag.tn.gov
(615) 253-5642

Jessica Jernigan-Johnson
Deputy Law Director, Knox County
Suite 612, City-County Building
400 Main Street
Knoxville, TN 37902
Jessica.Johnson@knoxcounty.org
(865) 215-2327

/s/ Alan Schoenfeld
Alan Schoenfeld